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12 SCHENKER, INC.

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 MICHELLE ORPILLA, on behalf of
16 herself, all others similarly situated,

17 Plaintiff,

18 v.

19 SCHENKER, INC., a New York
20 company; and DOES 1 through 50,
21 inclusive,

22 Defendant.

Case No. 5:19-CV-08392

**NOTICE TO FEDERAL COURT OF
REMOVAL OF CIVIL ACTION
PURSUANT TO 28 U.S.C. §§1441
AND 1446**

Complaint Filed on: November 20, 2019

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA:

Defendant Schenker, Inc. (“Defendant” or “Schenker”) files this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1446.

I. INTRODUCTION

Plaintiff Michelle Orpilla (“Plaintiff” or “Orpilla”) filed a Complaint in the Superior Court of the State of California in and for the County of Santa Clara entitled “Michelle Orpilla v. Schenker, Inc., a New York Company; and DOES 1 through 50, inclusive” Case No. CIVDS 19CV358821, on November 20, 2019 (the “Complaint”).

Plaintiff brings the following claim against Defendant: (1) Violation of 15 U.S.C. §§ 1681b(b)(2)(A) (Fair Credit Reporting Act).

This Notice is based upon the original jurisdiction of the United States District Court over the parties under 28 U.S.C. § 1331 based upon a federal question over Plaintiff’s claims.

II. FEDERAL QUESTION JURISDICTION

This Court has federal question jurisdiction over this action under 28 U.S.C. § 1331 (“Section 1331”). Section 1331 confers original jurisdiction on the federal district courts “of all civil actions arising under the Constitution, laws, or treaties of the United States.” Plaintiff’s claim for relief, set forth as paragraphs 23 through 44 of Plaintiff’s Complaint, invokes federal law, specifically, the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* As such, this Court has original federal question jurisdiction over this matter and it is removable under 28 U.S.C. § 1441.

III. PROCEDURAL HISTORY

Plaintiff filed his Complaint on November 20, 2019, and served the Complaint on Defendant’s agent for service of process on November 25, 2019. Accordingly, Defendant received service of the Complaint, the Summons, and the Civil Case Cover Sheet, true and correct copies of which are attached as Exhibits A and B to the

1 Declaration of Michelle Rapoport in Support of Defendants' Removal ("Rapoport
2 Decl.").

3 On December 19, 2019, Defendant timely filed and served an answer to
4 Plaintiff's Complaint in Santa Clara County Superior Court. A true and correct copy of
5 Defendants' Answer is attached to the Rapoport Decl. as **Exhibit B**.

6 On November 25, 2019, the Santa Clara County Superior Court issued an Order
7 Deeming Case Complex. A true and correct copy of the Santa Clara County Superior
8 Court's Order is attached to the Rapoport Decl. as **Exhibit C**.

9 On November 25, 2019, Plaintiff served on Defendant's registered agent copies
10 of the Summons and Complaint, and Civil Case Cover Sheet. A true and correct copy
11 of the proof of service received from Plaintiff's counsel is attached to the Rapoport
12 Decl. as **Exhibit D**.

13 On December 17, 2019, Plaintiff filed a Proof of Service with the superior court.
14 A true and correct copy of the Plaintiff's Proof of Service is attached to the Rapoport
15 Decl. as **Exhibit E**.

16 On December 19, 2019, Defendant filed its Answer to Plaintiff's Complaint. A
17 true and correct copy of Defendant's Answer is attached to the Rapoport Decl. as
18 **Exhibit F**.

19 The court also set a Case Management Conference for March 6, 2020. A true
20 and correct copy of the court's online docket reflecting this order is attached to the
21 Rapoport Decl. as **Exhibit G**.

22 To the best of Defendant's knowledge, all documents filed or served by Plaintiff
23 in her state court action are attached to the Rapoport Decl. as **Exhibits A through G**.
24 To Defendant's knowledge, no other documents have been filed by Plaintiff, nor have
25 any other documents been filed in the state court action by Defendant other than **Exhibit**
26 **F**. The attachments to the Rapoport Decl. thereby satisfy the requirements of 28 U.S.C.
27 § 1446(a).
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1 Schenker is the only named Defendant, so no other party need consent to the
 2 removal. Because the remaining named Doe Defendants have not yet been named or
 3 served, they need not join or consent to Defendant's Notice of Removal. Community
 4 Bldg. Co. v. Maryland Casualty Co., 8 F.2d 678, 678-79 (9th Cir. 1925) (named
 5 defendants not yet served in state court action need not join in the notice of removal);
 6 Salveson v. Western States Bankcard Ass'n, 731 F.2d 1426, 1429 (9th Cir. 1984)
 7 superseded on other grounds by statute as stated in Etheridge v. Harbor House
 8 Restaurants, 861 F.2d 1389 (9th Cir. 1988) (same). Defendant is informed and believes
 9 that none of the Doe Defendants in this case have been identified or served. Doe
 10 Defendants designated 1 to 50 are fictitious, are not parties to this action, have not been
 11 served, and are to be disregarded for the purpose of this removal. 28 U.S.C. § 1441(a).
 12 See Fristoe v. Reynolds Metals Co., 615 F.2d 1209, 1213 (9th Cir. 1980).

13 Copies of this Notice of Removal, as well as the Notice of filing of Notice of
 14 Removal, have been mailed to Plaintiff's counsel as required by 28 U.S.C. § 1446(d)
 15 and are being filed with the clerk of the Santa Clara County Superior Court.

16 **IV. THE NOTICE OF REMOVAL IS TIMELY AND PROCEDURALLY**
 17 **CORRECT.**

18 Schenker timely filed this Notice of Removal within the thirty (30) day period
 19 following service of the Complaint, as required by 28 U.S.C. § 1446(b). Plaintiff served
 20 Schenker on November 25, 2019.

21 Venue is proper in this District under 28 U.S.C. § 1441(a) because this District
 22 and Division encompass the place in which the removed action was pending. See 28
 23 U.S.C. §§ 84(a), 1441(a), 1446(a).

24 Schenker will promptly file a copy of this Notice of Removal with the Clerk of
 25 the State court in which the action has been pending.

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1 WHEREFORE, Schenker requests this Court to remove the instant case from the
2 Superior Court of the State of California in and for County of Santa Clara to the United
3 States District Court for the Northern District of California.

4 Dated: December 23, 2019

5
6 /s/ Michelle Rapoport
7 MICHELLE RAPOPORT
8 EVERETT C. MARTIN
9 LITTLER MENDELSON, P.C.
10 Attorneys for Defendant
11 SCHENKER, INC.

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